whether they thought that the particular magistrate would have gone on with the taking of the confession if the accused had said to him that he was forced to make it (which had never been suggested), he then proceeded to deal with the question of the truth of the confession by telling the jury that they should deal with it by examining the confession in the light of the other evidence. They were not told that in that connection they were entitled to their opinion of the way in which the confession had been obtained.

In our view what was done was wrong.

The question of admissibility of evidence is for the judge and not the jury to decide (Criminal Procedure Code, section 224(i)(a)). Where this calls for a decision as to whether the statement is free and voluntary a question of fact is involved and that question must be decided, like any other question of fact, on evidence. And to decide it the judge must listen not only to any evidence tendered by the prosecution but also to any evidence relating to the issue tendered by the defence, including if tendered the evidence of the prisoner, (see *R.* v. *Cowell*).[2] That evidence must be heard in the absence of the jury, (see *Chadwick*).[3] The point is dealt with thus by Parker L.C.J. in the case of *Francis and Murphy*:— [4]

"It has always been the settled practice in cases of this sort for a challenge to be made to the admissibility of the statement at an early stage in the absence of the jury. The matter is set out in the 34th (1959) edition of *Archbold's* Criminal Pleadings, etc., at paras. 1114 and 1115. 'The proper course,' it is said there, 'where objection is raised to the admissibility of an alleged confession, is for the judge to hear evidence in the absence of the jury and to rule upon that evidence whether the alleged confession should be admitted or not.' The passage goes on to say that the evidence of the prisoner may be admitted at that stage. Then, if the evidence is admitted, 'the weight and value of a confession remain matters for the jury.' It is quite clear that a prisoner is entitled both to a ruling on admissibility from the judge and also to hear the verdict of the jury on the weight and value of the confession."

From the proposition that the accused person is entitled to have the verdict of the jury on the weight and value of the confession it clearly follows that if the confession is admitted the jury should hear the evidence which thitherto the judge alone has heard. Then counsel for the defence should be allowed to cross-examine the prosecution witnesses over again in the presence of the jury and in due course, if so desired, to call the prisoner to repeat his evidence.

As was said by Lord Goddard in the case of *Murray, supra,* (at p. 207):—

"Its weight (of the confession) and its value were for the jury, and in considering its weight and value the jury were entitled to form their opinion on the way in which it has been obtained."

And his Lordship said a little later:

"This point, if there is any doubt about it, had better be settled once and for all. It has always, as far as this court is aware, been the right of counsel for the defence to cross-examine again the witnesses who have already given evidence in the absence of the jury, because if he can induce the jury to think that the confession has been obtained by some threat or promise or some means of that sort, then of course the value of the confession is enormously weakened. The weight of the evidence and the value of the evidence are always for the jury."

In our view in the present case there has been such a disregard of the ordinary way in which criminal proceedings are conducted that the conviction cannot stand. The question of the appellant's criminal responsibility is to be tried in the right and usual manner and that has not been done.

We accordingly quash the conviction and order a retrial on the original charge.

Conviction quashed; retrial ordered.

Solicitors: *R. R. Chelliah Bros.*

DEPUTY PUBLIC PROSECUTOR v. TAN BIAN OUN

[A.Cr.J. (Buttrose J.) September 29, 1965]

[Singapore — Magistrate's Appeal No. 43 of 1965]

Gaming — Betting — Bookmaking — Possession of documents or articles relating to business of bookmaking — Whether necessary to prove that person can continue to be a bookmaker — Whether time essence of charge — Betting Ordinance, 1960, ss. 5(3)(a) and 8.

The accused had been charged with the offence of acting as a bookmaker under section 5(3)(a) of the Betting Ordinance. The learned magistrate acquitted the accused, as he held that time was the essence of the charge, and as the races to which documents found on the accused related had been run he could no longer be a bookmaker in respect of them. The Deputy Public Prosecutor appealed.

Held: (1) the section refers to the possession of documents or other articles which are used or appear to have been used or intended to be used for bookmaking and once possession of the documents is established the time factor is immaterial and irrelevant and the person found in possession is presumed to be a bookmaker;

(2) in this case there were other unsatisfactory features of the case which made it unsafe to convict and therefore the appeal must be dismissed.

MAGISTRATE'S CRIMINAL APPEAL.

Mrs. Quek Bee See (Deputy Public Prosecutor) for the appellant.

S. R. Chapkhana for the respondent.

Buttrose J.: This was an appeal by the Deputy Public Prosecutor against an order of acquittal of the tenth magistrate in respect of a charge against the respondent of acting as a bookmaker under section 5(3)(a) of the Betting Ordinance, 1960 (No. 30 of 1960).

I agreed with the decision of the learned magistrate but not for the same reasons and dismissed the appeal.

There were, in my view, certain unsatisfactory features of the case which rendered it unsafe not only to convict but which did not justify the respondent being called on for his defence.

The evidence was not sufficient, in my opinion, to bring the respondent within the provisions of section 8 of the Ordinance so as to enable the prosecution to invoke the aid of the presumption.

Section 8(1) of the Ordinance is as follows:—

"Any person accepting or receiving bets, stakes, or wagers or found in possession of any books. accounts, documents, telegrams, writings, circulars, cards or other articles which are used or appear to have been used or intended to be used in connection with or which relate or appear to relate to the business of a bookmaker shall be presumed until the contrary is proved to be acting as a bookmaker."

The learned magistrate in his grounds of decision said this:

"The prosecution in this case seeks to rely on section 8(1) of Ordinance 30/60. However, in my opinion, the word 'bookmaker' in this presumption must be read within the ambit of the definition of 'bookmaker' in section 2(1) of the Ordinance. In my view, time is of the essence in a charge of this nature, and a person cannot be said to be a bookmaker within the said definition once the races are over for the day. For example — to stretch a point — a person cannot be charged with bookmaking at 12 midnight because there will be no bets which a person can receive or negotiate, nor is there any question of his holding himself out as a bookmaker, unless there is evidence that a person can continue to be a bookmaker within the definition of 'bookmaker' even after the races are over."

With respect to the learned magistrate I am unable to agree. Time is not of the essence of the matter in a charge of this nature.

Once possession is established the time factor is immaterial and irrelevant in so far as raising the presumption is concerned. The section refers to possession of documents or other articles which are used *or appear to have been used or intended to be used* or which relate or appear to relate to the business of a bookmaker. The person so found in possession is presumed until the contrary is proved to be acting as a bookmaker within the definition in section 2 of the Ordinance.

Similarly under section 8(2) any person who settles or pays money in respect of bets or wagers relating to a horse race is presumed until the contrary is proved to be acting as a bookmaker within the definition in section 2 of the Ordinance. Settling day may be and often is on a day subsequent to a race day.

Construing the section as a whole it seems to me to be clear that time is not and was never intended to be of the essence of the charge as found by the learned magistrate.

Appeal dismissed.

Solicitors: *Ironside & de Souza.*

SONG TIN KUI v. PUBLIC PROSECUTOR

[A.Cr.J. (Ali J.) October 1, 1965]

[Ipoh — Perak Criminal Appeal No. 21 of 1965]

Criminal Law and Procedure — Sentence — Necessity to record reasons if sentence less than mandatory one is imposed — Betting Ordinance, 1953, s. 6(3)(a).

Section 6(3) of the Betting Ordinance, 1953, provides that upon conviction for an offence thereunder the accused shall be liable to a fine which shall not be less than two thousand dollars unless the court for reasons to be recorded by it thinks fit to order otherwise. In this case the accused was found guilty of an offence under section 6(3) of the Betting Ordinance and fined $500 but the record of the trial did not state the reasons for the sentence. The appellant appealed against his conviction and sentence.

Held: the appeal against conviction was without merits and must be dismissed but as no reasons were given for the sentence at the trial in this case, the fine must be increased to the mandatory one of $2,000.

MAGISTRATE'S CRIMINAL APPEAL.

R. C. M. Rayan for the appellant.

Haji Suhaimi (Deputy Public Prosecutor) for the respondent.

Ali J.: This was an appeal against conviction and sentence for an offence under section 6(3)(a) of the Betting Ordinance, 1953. The appeal against conviction being without merit was dismissed leaving for consideraton only the question as regards sentence. Section 6(3) of the Ordinance expressly provides that upon conviction for an offence thereunder the accused shall be liable to a fine which shall not be less than two thousand dollars (unless the court for reasons to be recorded by it thinks fit to order otherwise). The record of the trial, so far as it is relevant to this question, merely showed thus:—

"Accused found guilty and fined $500 in default 3 months."

Properly construing this section, it seems to me that the Legislature had thought it fit to provide as a minimum a sentence of a fine of not less than $2,000 upon conviction for an offence as a book-maker. In the exceptional case, however, the trial magistrate may impose a lesser sentence if, having regard to any extenuating circumstances, he considers it reasonable to do so. But the law requires as a condition precedent that before proceeding to do so (not after) he must record his reasons. Generally speaking, a presiding magistrate is assumed to have reasons for taking a particular course of action during a trial. Although as a matter of prudence it is desirable that he should record these reasons at the trial itself, the law does not strictly require him to do so. In this particular case, however, it is expressly required by statute that these reasons must be recorded during and not after the trial. The learned deputy was, however, of the view that it was sufficient, as had been done